No. 1682

In the Supreme Court of the United States

October Term, 1956

PAN AMERICAN PETROLEUM CORPORATION,
PETITIONER

v.

FRED A. SEATON, SECRETARY OF THE INTERIOR

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR THE RESPONDENT IN OPPOSITION

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INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	3
Argument	6
Conclusion	12

CITATIONS

Cases:

Stanolind Oil and Gas Company v. *Seaton*, 242 F.2d 28	1
Stanolind Oil and Gas Company v. *State Mineral Board*, No. 46,628, 19th Jud. Dist. Ct., Parish of East Baton Rouge, La.	10
United States v. *Louisiana*, 339 U.S. 699	4
United States v. *Louisiana*, 340 U.S. 899	4
United States v. *Louisiana*, No. 11, Original	5

Statutes:

Submerged Lands Act, May 22, 1953, 67 Stat. 29, 43 U.S.C., Supp. IV, 1301-1315	4, 11
Section 3(a) (43 U.S.C., Supp. IV, 1311(a))	11
Outer Continental Shelf Lands Act, August 7, 1953, 67 Stat. 462, 43 U.S.C., Supp. IV, 1331-1343	2, 5, 11
Section 6 (43 U.S.C., Supp. IV, 1335)	2, 5, 6, 7, 8
Section 6(a) (43 U.S.C., Supp. IV, 1335(a))	2, 8, 9
Section 6(b) (43 U.S.C., Supp. IV, 1335(b))	3, 5, 7, 9, 11
Section 6(d) (43 U.S.C., Supp. IV, 1335(d))	3, 6

Miscellaneous:

Hearings before the Senate Committee on Interior and Insular Affairs on S. 1901, 83d Cong., 1st Sess.	9
H.R. 5134, 83d Cong.	9
S. 1901, 83d Cong.	9
99 Cong. Rec. 7261	9
99 Cong. Rec. 10473	9

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OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. 8a-9a) is reported under the title *Stanolind Oil and Gas Company* v. *Seaton* at 242 F.2d 23. The opinion of the District Court (R. 83-88) is not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on November 1, 1956 (Pet. App. 9a-10a). A timely petition for rehearing was denied on March 19, 1957 (R. 103). The petition for a writ of certiorari was filed on June 13, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, under Section 6 of the Outer Continental Shelf Lands Act, the Secretary of the Interior was required to reinstate a non-producing oil and gas lease off the coast of Louisiana which the Louisiana lessee had allowed to lapse between June 5 and December 11, 1950.

STATUTE INVOLVED

Relevant portions of Section 6 of the Outer Continental Shelf Lands Act of August 7, 1953, 67 Stat. 465-567, 43 U.S.C., Supp. IV, 1335, are as follows:

> *Sec. 6. Maintenance of Leases on Outer Continental Shelf.*—(a) The provisions of this section shall apply to any mineral lease covering submerged lands of the outer Continental Shelf issued by any State (including any extension, renewal, or replacement thereof heretofore granted pursuant to such lease or under the laws of such State) if—
>
> * * * *
>
> (2) such lease was issued prior to December 21, 1948, and would have been on June 5, 1950, in force and effect in accordance with its terms and provisions and the law of the State issuing it had the State had authority to issue such lease;
>
> * * * *
>
> (4) except as otherwise provided in section 7 hereof, all rents, royalties, and other sums payable under such lease between June 5, 1950, and the effective date of this Act, which have not been paid in accordance with the provisions thereof, or to the

Secretary [of the Interior] or to the Secretary of the Navy, are paid to the Secretary within the period or periods specified in paragraph (1) of this subsection * * *;

* * * *

(b) Any person holding a mineral lease, which as determined by the Secretary meets the requirements of subsection (a) of this section, may continue to maintain such lease, and may conduct operations thereunder, in accordance with (1) its provisions * * * as to the term thereof and of any extensions, renewals, or replacements authorized therein or heretofore authorized by the laws of the State issuing such lease, or, if oil or gas was not being produced in paying quantities from such lease on or before December 11, 1950, or if production in paying quantities has ceased since June 5, 1950, or if the primary term of such lease has expired since December 11, 1950, then for a term from the effective date hereof equal to the term remaining unexpired on December 11, 1950 * * *.

* * * *

(d) Any person complaining of a negative determination by the Secretary of the Interior under this section may have such determination reviewed by the United States District Court for the District of Columbia by filing a petition for review within sixty days after receiving notice of such action by the Secretary.

STATEMENT

In 1946 and 1948 petitioner leased from the State of Louisiana oil and gas rights in seven tracts of submerged land in the Gulf of Mexico (R. 31-32,

89). Each lease provided that, in the absence of drilling or production, it would expire at the end of one year unless the lessee within that time paid additional rent to extend its drilling privilege for another year (R. 17, 89). The total period, called the primary term, within which each lease could be thus extended by successive annual rent payments was originally five, later extended to seven, years from the issuance date (R. 17, 22-23, 89).[1] Petitioner made annual rent payments by which these leases were extended, without drilling, to their respective anniversary dates of September 12 or November 19, 1950 (R. 33, 89-90).

On June 5, 1950, this Court held that Louisiana had no title to or property interest in the offshore area. *United States* v. *Louisiana*, 339 U.S. 699. On December 11, 1950, a decree was entered in that case, enjoining the State and its lessees from further activity in the area without consent of the United States. 340 U.S. 899. After June 5, 1950, petitioner continued to pay delay rentals on other offshore leases that it held from Louisiana, but decided to pay no more on these seven, and let them lapse (R. 34-35, 44-52, 89). Formal releases were given to the State for six leases on September 15, 1950 (R. 35), and for the seventh on December 11, 1950 (R. 90).

By the Submerged Lands Act of May 22, 1953, Congress gave the submerged lands within historic

[1] There was no limit on how long a lease could be extended by continuous drilling or production of oil or gas in paying quantities (R. 18).

State boundaries to the several coastal States or to the persons who were entitled thereto under State law on June 5, 1950. 67 Stat. 29, 43 U.S.C., Supp. IV, 1301-1315. By the Outer Continental Shelf Lands Act of August 7, 1953, Congress provided for leasing of submerged lands seaward of those granted by the Submerged Lands Act. 67 Stat. 462, 43 U.S.C., Supp. IV, 1331-1343. Section 6(b) of the Outer Continental Shelf Lands Act provides that "Any person holding a mineral lease" issued by a coastal State, which is determined by the Secretary of the Interior to meet the requirements of Section 6(a), may continue to maintain such lease as a federal lease, subject to certain qualifications. In the case of non-producing leases, as were those involved here (R. 39, 89), maintenance is permitted for a term from August 7, 1953 (the effective date of the Act), "equal to the term remaining unexpired on December 11, 1950" (*supra*, p. 3).

Petitioner made timely applications under Section 6 of the Outer Continental Shelf Lands Act to the Secretary of the Interior to maintain the seven leases in question, tendering all rents that would have been due between June 5, 1950, and August 7, 1953, and for the year beginning September 12, 1953 (R. 38, 67-77, 90).[2] The Secretary rejected the tender, deter-

[2] The submerged lands here involved are within the area claimed by both the United States and the State of Louisiana in *United States* v. *Louisiana*, No. 11, Original, of the present Term. However, for purposes of the present case the parties are agreed that the lands are on the outer continental shelf; that is, that they are under federal rather than State control (R. 39, 89).

mining that because the leases had been allowed to expire before December 11, 1950, they were not eligible for maintenance under the Act (R. 38, 78-80, 90). Petitioner thereupon brought this action to review that ruling, as permitted by Section 6(d) of the Act (*supra*, p. 3). On stipulated facts (R. 31-40) and cross-motions (R. 80-83), the court gave summary judgment for the Secretary of the Interior (R. 83-88, 90), which the Court of Appeals affirmed (Pet. App. 8a-10a). Judge Miller dissented without opinion.

ARGUMENT

The case presents no question of general importance. The only issue is whether State mineral leases that were allowed to expire after June 5, 1950, are eligible to be reinstated as federal leases under Section 6 of the Outer Continental Shelf Lands Act. This case and the two others mentioned by petitioner as now pending (Pet. 13, fn. 5) are the only suits which raise the question at present. We are informed by the Department of the Interior that the question is not involved in any pending application under Section 6; and the time has expired for filing other such applications or for suing on any applications that have already been denied on this ground. Thus, there can be no further cases on the point. Petitioner's suggestion that the ruling below will prevent maintenance of all leases under Section 6 is based on a misunderstanding of the holding (see *infra*, pp. 9-10). Therefore, although petitioner's attack on the deci-

sions below is unfounded, the case is in any event not an appropriate one for review by this Court.[3]

Section 6 of the Outer Continental Shelf Lands Act of August 7, 1953, shows on its face that it does not permit reinstatement of State leases that had expired before December 11, 1950, as did those here sued on. The operative language of the section is the provision of Section 6(b) that "Any person *holding* a mineral lease, which as determined by the Secretary [of the Interior] meets the requirements of subsection (a) of this section may *continue to maintain* such lease * * * " (*supra*, p. 3, emphasis added). It does not say that one who formerly held a lease may resume maintenance of it, which is the effect that petitioner would give it. Moreover, the period for which non-producing leases, as are here involved (R. 39, 89), may be maintained is "for a term from the

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[3] Both of the courts below affirmatively agreed with the construction put upon the statute by the Secretary of the Interior. Consequently, the case does not present the question, suggested by the petitioner (Pet. 16-18), of whether it is enough for a court to find that an administrative interpretation is reasonable, without finding that it is right. The District Court said of the Secretary's construction (R. 88), "this strikes us as a proper, preferable and, in the very least, as a reasonable interpretation." The word "preferable" (omitted in the petitioner's partial quotation; Pet. 16) demonstrates that the court had construed the statute for itself. Even more emphatically giving its own interpretation of the statute, the Court of Appeals said (Pet. App. 9a): "We think the court was clearly right. The leases in suit had no 'term remaining unexpired on December 11, 1950'. Appellant was not, when the Act was passed, 'holding' the leases. For each of these reasons, independently of the other, § 6(b) of the Act does not cover these leases."

effective date hereof equal to the term remaining unexpired on December 11, 1950." (*Supra*, p. 3.) Since petitioner's leases expired by their own limitations when petitioner failed to extend them, on September 12 or November 19, 1950, they obviously had no "term remaining unexpired on December 11, 1950." Thus, petitioner is not a person "holding" a lease, so as to be entitled to benefits under Section 6, and in any event the measure of benefits defined by Section 6 would be, in the case of petitioner's former leases, zero.[4]

The petitioner contends (Pet. 9-10) that the construction put on the Act by the court below, precluding reinstatement of lapsed leases, renders superfluous Section 6(a)(4), which petitioner says "expressly provides that lessees who held leases in force and effect on June 5, 1950, may tender *all* back rentals due under the leases and thus provide for their reinstatement." However, Section 6(a)(4) in fact says nothing about reinstatement (see *supra*,

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[4] Petitioner argues (Pet. 9) that this construction of the Act, requiring leases to have been in effect on December 11, 1950, and on the date of the Act, is inconsistent with the requirement of Section 6(a)(2) (*supra*, p. 2) that the leases must have been in effect on June 5, 1950. There is no inconsistency in requiring the leases to have been in effect on those several dates. The evident effect of the June 5 requirement is that leases which lapsed before that date cannot be reinstated thereafter so as to secure benefits under the federal Act. That is, the benefits of Section 6 are to be limited to leases that were kept in effect continuously, and are not extended to any that may have been reinstated after June 5, 1950, after having lapsed before that date.

pp. 2-3), and its purpose is altogether different. This was fully explained in the Senate committee hearings. The purpose of the provision, as there explained, was to require payment of deficiencies in any case where an audit might show that there had been errors in computing payments made. Senator Anderson urged that the Act ought not to permit reinstatement where lessees had let their leases lapse after June 5, 1950; Senator Daniel emphatically assured him that Section 6(a)(4) would not have that effect, and this was corroborated by two expert witnesses, an Assistant Attorney General of Louisiana and the chairman of a legal committee of offshore oil operators, invited to testify as representative of the industry. No witness or committee member took a different view. Hearings before the Senate Committee on Interior and Insular Affairs on S. 1901,[5] 83d Cong., 1st Sess., 297-300, 528-529, 532, 534. Senator Cordon, in charge of the bill in the Senate said, with reference to another clause of Section 6(b), "our purpose was to validate the leases that were being operated and held in good faith * * *." 99 Cong. Rec. 10473. It would violate that purpose to read into Section 6(a)(4) an implication that former lessees are to be allowed to reinstate old leases that they allowed to expire.

Petitioner also argues (Pet. 11-13) that since all State offshore leases were void because the States had no title, it follows that no such lease had a "term"

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[5] The provisions of S. 1901 were substituted for the original provisions of H.R. 5134, under which designation the bill was ultimately passed. 99 Cong. Rec. 7261.

in a true legal sense. Consequently, says petitioner, the court below required the impossible in requiring that a non-producing lease, in order to be maintainable, must have had a term remaining unexpired on December 11, 1950. Petitioner draws the conclusion that the court could not consistently recognize any State lease which did not have strict validity and that, since none did, the whole purpose of Section 6 will be frustrated. But the court made no such impossible requirement. Congress and the court were well aware of the invalidity of the State leases; that was the very reason for the enactment of Section 6. When Congress spoke of the "term" of a lease which it knew to be void, it meant to refer to the ostensible or putative or purported term; and the courts below correctly construed the expression in that sense. When petitioner's purported leases expired, they had thereafter no purported term remaining unexpired, by which to measure benefits under Section 6. This reasonable, and indeed inevitable, construction of the congressional language involves none of the anomalies and entails none of the consequences conjured up by petitioner's ingenious apprehensions.

Petitioner urges (Pet. 13-16) that the decision below conflicts with a decision of a trial court of the State of Louisiana which allowed reinstatement, under the Submerged Lands Act, of leases that had been let lapse after June 5, 1950. *Stanolind Oil and Gas Company* v. *State Mineral Board*, No. 46,628, 19th Jud. Dist. Ct., Parish of East Baton Rouge, La. (R. 55-67). Whatever significance such a conflict might have is wholly destroyed by the fundamental

difference between the provisions of the Submerged Lands Act and the Outer Continental Shelf Lands Act. The former clearly makes June 5, 1950, the critical date for existence of a lease. It grants the submerged lands within State boundaries "to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof." Sec. 3(a), 67 Stat. 30, 43 U.S.C., Supp. IV, 1311(a). In contrast, the Outer Continental Shelf Lands Act provides that "Any person holding a mineral lease * * * may continue to maintain" it. Sec. 6(b), 67 Stat. 466, 43 U.S.C., Supp. IV, 1335 (b). The sense of a present "holding", inherent in the grammatical construction, is strongly reinforced by the absence of any provision for successors in interest, which logic would require if reference to a "holding" at some past time had been intended. When Congress uses such different language in two statutes so closely linked in time and subject, it must be concluded that it intends different things.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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JULY 1957

U. S. GOVERNMENT PRINTING OFFICE 1957 432105 15